

ORDINANCE NO. 961-04

AN ORDINANCE OF THE CITY OF ALGONA, WASHINGTON GRANTING A TEN (10) YEAR FRANCHISE AGREEMENT TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY TO COMCAST OF WASHINGTON IV, INC. SETTING FORTH THE TERMS AND CONDITIONS OF SAID SERVICE, ESTABLISHING PENALTIES, AND FIXING AN EFFECTIVE DATE.

WHEREAS, Comcast of Washington IV, Inc. (hereinafter, "Grantee"), has been operating a Cable Television System within the City pursuant to an existing cable television Franchise; and

WHEREAS, the Grantee has requested that its current cable Franchise be renewed following the expiration of its current Franchise; and

WHEREAS, City of Algona (hereinafter, "Grantor"), having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") with the Grantee for the construction, operation and maintenance of a Cable System; and

WHEREAS, the Grantee and Grantor have agreed to be bound by the conditions hereinafter set forth; now therefore:

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

- A.** "Customer" means a Person or user of the Cable System who lawfully receives Cable Service there from with the Grantee's express permission.
- B.** "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.
- C.** "FCC" means the Federal Communications Commission or successor governmental entity thereto.
- D.** "Franchise" means the initial authorization, or renewal thereof, issued by the Grantor, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.
- E.** "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

- F.** “Franchise Area” means the present legal boundaries of the (Grantor) as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.
- G.** “Grantee” shall mean Comcast of Washington IV, Inc. or its lawful successor, transferee or assignee.
- H.** “Grantor” means the City of Algona, a city of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.
- I.** “Gross Revenue” means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenue shall not include advertising or home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.
- J.** “Multichannel video programming distributor” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- K.** “Municipal buildings” are those buildings owned or leased by the Grantor for government administrative purposes, and shall not include buildings owned by Grantor but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.
- L.** “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Grantor.
- M.** “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantor and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Grantor within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Grantor and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

SECTION 2 - Grant of Authority

- A.** The Grantor hereby grants to the Grantee under the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.
- B.** Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act. Upon entering the 36 month renewal period, if the Grantor and Grantee mutually agree that the Grantee has fulfilled the commitments of the Franchise and the future cable-related needs of the community are being met, the Grantor shall extend the term of this Franchise to a total of fifteen (15) years.
- C.** Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.
- D.** Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Grantor to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Grantor, or (C) be construed as a waiver or release of the rights of the Grantor in and to the Public Ways.
- E.** Competitive Equity
- 1.** The Grantee acknowledges and agrees that the Grantor reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Grantor agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.
 - 2.** In the event an application for a new cable television franchise is filed with the Grantor proposing to serve the Franchising Area, in whole or in part, the

Grantor shall, upon request from the Grantee, provide a copy of such application to the Grantee to allow them to assess the competitive equity of the proposed franchise.

3. In the event that a non-franchised multichannel video programming distributor provides service to the residents of the Grantor, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall: (1) indicate the presence of a non-franchised competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not unreasonably withhold consent to the Grantee's petition.

SECTION 3 – Construction and Maintenance of the Cable System

- A. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.
- B. Conditions on Street Occupancy.
1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Grantor (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the Grantor shall upon written request of the Grantee make application for such funds on behalf of the Grantee.
 2. Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Grantor to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

6. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In instances wherein conversion from aerial to underground is caused by the Grantor, the Grantee shall pay for costs directly associated with labor and materials utilized in the placement of its facilities. In instances wherein the Grantor takes the lead in a joint relocation project, cost allocation shall be based on the proportionate number of ducts being placed. The Grantor shall be responsible for costs related to restoration of any Public Ways within the project area as is defined by the Grantor's project engineering plans. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all labor and material costs associated with the conditioned underground conversion of cable facilities. The Grantee and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

SECTION 4 - Service Obligations

- A.** General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.
- B.** The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.
- C.** Programming. The Grantee shall offer to all Customers a diversity of video programming services.
- D.** No Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.
- E.** New Developments. The Grantor will provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities. The developer shall be responsible for providing the Grantee access to all availability open trenches and the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of cable facilities within the development. For conversion of cable facilities as part any street improvement condition(s), see "Aerial and Underground Construction."
- F.** Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

SECTION 5 - Fees and Charges to Customers

- A. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.
- B. Low Income Senior / Disabled Subscriber Discount. The Grantee may offer a discount of thirty percent (30%) from its published rate-card rate to Subscribers for Basic Cable service who are aged sixty-five (65) or older, and/or disabled, provided that such person(s) are the legal owner or lessee/tenant of their residence and that their combined disposable income from all sources does not exceed the Housing and Urban Development standards for the Seattle-Everett area for the current and preceding calendar year. The Grantor shall be responsible for certifying to the Grantee that discount applicants conform to the specified criteria.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

- A. Customer Service Standards. The Grantor hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.
- B. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (1) is not misleading and (2) does not omit material information. Notwithstanding anything to the contrary in Section A, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).
- C. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7 - Oversight and Regulation by Grantor

- A. Franchise Fees. The Grantee shall pay to the Grantor a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

B. Franchise Fees Subject to Audit.

1. Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office, the Grantor shall have the right to inspect the Grantee's financial records used to calculate the Grantor's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Grantor receives such payment, after which period any such payment shall be considered final.
2. Upon the completion of any such audit by the Grantor, the Grantor shall provide to the Grantee a final report setting forth the Grantor's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Grantor with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Grantor by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.
3. Any "Finally Settled Amount(s)" due to the Grantor as a result of such audit shall be paid to the Grantor by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Grantor shall have no further rights to audit or challenge the payment for that period. The Grantor shall bear the expense of its audit of the Grantee's books and records.

C. Oversight of Franchise. In accordance with applicable law, the Grantor shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

D. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Grantor shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

E. Maintenance of Books, Records, and Files.

1. Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Grantor, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the Grantor shall be retained by the Grantee for a minimum period of three (3) years.
2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.
3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Grantor agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Grantor that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the Grantor receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Grantor shall notify Grantee of such request and cooperate with Grantee in opposing such request.

SECTION 8 – Transfer or Change of Control of Cable System or Franchise

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by

Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Grantor shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any; it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Grantor has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 9 - Insurance and Indemnity

- A. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Grantor certificates of insurance designating the Grantor and its officers, boards, commissions, councils, elected officials, agents and employees as additional insured and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Grantor. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Grantor from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement
- B. **Indemnification.** The Grantee shall indemnify, defend and hold Grantor, its officers, officials, employees, and agents, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in an way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or other act done under this franchise, by or for Grantee, its agents, or its employees, or by reason of an neglect or omission of Grantee its agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor.

SECTION 10 - System Description and Service

- A. **System Capacity.** During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.
- B. **Service to School Buildings.** The Grantee shall provide free "Basic" and "Expanded Basic" tier Cable Service and free installation at one outlet to each public and private school, not including "home schools," located in the Franchise Area within 125 feet of the Grantee's distribution cable. For purposes of this subsection, "Expanded Basic" shall mean that tier of cable service just above the most basic level of service offered by the Grantee.
- C. **Service to Municipal Facilities.** The Grantee shall provide free "Basic" and "Expanded Basic" tier Cable Service and free installation at one outlet to each

municipal building located in the Franchise Area within 125 feet of the Grantee's distribution cable. For purposes of this subsection, "Expanded Basic" shall mean that tier of cable service just above the most basic level of service offered by the Grantee.

- D. High-Speed Internet Access to Municipal Facilities. The Grantor may request access to the Internet through the Grantees high-speed Internet product and service for their municipal buildings located in the Franchise Area within 125 feet of the Grantee's distribution cable. Upon request, the Grantee shall provide, at a rate to be negotiated, one cable modem per site, or one ethernet card, and any software necessary for access to such service. The using facility shall be responsible for the provision, maintenance, updating and replacing as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Grantee shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the Grantor, to take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 11 – Governmental Access

- A. Use of channel capacity for governmental access shall be provided on the most basic tier of service offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth below. Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for government use. An access user – whether an individual or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Grantee shall not exercise editorial control over any governmental use of channel capacity, except Grantee may refuse to transmit any access program or portion of an access program that contains obscenity, indecency, or nudity. The Grantor shall be responsible for developing, implementing, interpreting and enforcing rules for the government access channel use which shall insure that an access channel and equipment will be available on a first-come non-discriminatory basis.
- B. Government Access. "Governmental Access Capacity" is a capacity designated for noncommercial use by the Grantor for the purpose of showing the public local government at work. Grantee shall designate capacity on one (1) channel for video programming provided by the Grantor.
- C. Indemnification. The Grantor shall indemnify Grantee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the government channel and from claims arising out of the Grantor's rules for or administration of access.
- D. Capital Support/Funding. Effective sixty-(60) days after the Effective Date of this Franchise, the Grantee shall provide and install, for the Grantor's government access capital support requirements, the equipment detailed in the list attached hereto,

marked as Exhibit A, and incorporated herein by this reference. The Grantor shall be responsible for operating and maintaining the equipment for government Access. The Grantee shall collect from the subscribers the capital support contribution, as permitted under 47 C.F.R. 76.922, in an amount equal to twenty-five cents (\$0.25) per subscriber per month until the \$ 9,518.40 capital support is paid in full. The Grantor agrees that 47 C.F.R. 76.922 permits Grantee to add the cost of the capital contribution to the price of cable services and to collect the capital contribution from subscribers. In addition, as permitted in 47 C.F.R. 76.985, all amounts paid as the capital contribution may be separately stated on subscriber's bills as a Government Access capital equipment fee.

SECTION 12 - Enforcement and Termination of Franchise

- A.** Notice of Violation for Default. In the event the Grantor believes that the Grantee has not complied with the material terms of the Franchise, the Grantor shall notify the Grantee in writing with specific details regarding the exact nature of the alleged default.
- B.** Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Grantor's written notice:
1. To respond to the Grantor, contesting the assertion of the default, and requesting a public hearing in accordance with Section C, below; or
 2. To cure such default; or
 3. Notify Grantor that such default cannot be cured within the forty-five (45) day period, because of the nature of the default. In the event the default cannot be cured within the forty-five (45) days, Grantee shall promptly take all reasonable steps to cure the default and notify Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days' prior written notice, either Grantor or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, Grantor may set a hearing in accordance with Section C below to determine whether additional time beyond the forty-five (45) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.
- C.** Public Hearings. If Grantee does not cure the alleged default within the cure period stated in Section B, or by the projected completion date under Section B (3), or denies the default and requests a public hearing under Section B (1), or the City orders a public hearing in accordance with section B (3), the Grantor shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Grantor that is scheduled at a time that is no less than thirty (30) days after Grantee's receipt of the public hearing notice. The Grantor shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.
- D.** Enforcement. Subject to applicable federal and state law, in the event the Grantor, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

1. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or
 2. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:
 - a) The Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of default by the Grantee, including one or more instances of substantial default with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the default. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Grantor shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
 - b) At the designated public hearing, the Grantor shall provide the Grantee a fair opportunity for full participation, including the rights to be represented by legal council, to state its position on the matter, to introduce evidence, and question witnesses, after which the Grantor shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a complete written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Grantor shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, and shall be entitled to such relief, as the Court may deem appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Grantor.
- E. Technical Violation.** The Grantor agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:
1. In instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
 2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 13 - Miscellaneous Provisions

A. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

B. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Grantor:

City of Algona
402 Warde Street
Algona, WA 98001
Attn: City Clerk

To the Grantee:

Comcast of Washington IV, Inc.
4020 Auburn Way N.
Auburn, WA 98002
Attn: General Manager

with a copy to:

Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, PA 19102
Attn.: Government Affairs Department

C. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Grantor and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

D. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent

jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

- E. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.
- F. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate resolution or order by the Grantor, as required by applicable law.
- G. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.
- H. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural; Grantee may have under federal or state law unless such waiver is expressly stated herein.
- I. Acceptance. This Franchise and its terms and provisions shall be unconditionally accepted by the Grantee by the submission of a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

SECTION 14 – Effective Date

This Ordinance shall take affect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED this 21st day of December 2004 and signed in authentication of its passage this 21st day of December 2004.

Joe Scholz, Mayor

Attest:

Approved as to Form:

Danielle M. Stafford, City Clerk/Treasurer

George S. Kelley, City Attorney

EXHIBIT A: PEG Access Capitol Support Equipment List

The following equipment is to be provided and installed by the Grantee in order to support the Grantor's PEG Access capital support requirements:

Equipment	Qty	Unit
Standard TVM-450 modulator	1	each
Blonder Tongue agile processor	1	each
Antec Laser Link II shelf	1	each
Antec LLFR Receiver	1	each
LLT 1310 transmitter	1	each
RU band pass	1	each
Antec RFM Shelf	1	each
Antec RFM 4-way	1	each
Optical Jumpers	2	each
Optical Attenuators	2	each
RF Cable	100	foot
RF Fittings	20	each